

September 7, 2001

Sent via e-mail, hand delivery, and U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Verizon's Alternative Regulation Plan, DTE 01-31

Dear Secretary Cottrell,

Pursuant to the Hearing Officer's Memorandum of August 28, 2001, the Attorney General for the Commonwealth of Massachusetts ("Attorney General") files this letter in support of the AT&T Communications of New England, Inc. ("AT&T") Motion to Compel Discovery Responses by Verizon Massachusetts, or in the Alternative, AT&T's Motion to Strike Testimony of Robert Mudge and William E. Taylor (the "AT&T Motion" or "Motion"). AT&T filed its Motion after Verizon New England, Inc., d/b/a Verizon Massachusetts ("Verizon" or "the Company") refused to provide AT&T with certain competitive local exchange carrier ("CLEC") E911 data and information. The Attorney General urges the Department of Telecommunications and Energy ("DTE" or "Department") to compel Verizon to provide the requested CLEC E911 data and information or, in the alternative, to strike those portions of the Mudge and Taylor testimonies and related information request responses that refer to or rely upon CLEC E911 data and information.

Background

On April 12, 2001, Verizon filed the testimonies of Robert Mudge and William E. Taylor which incorporate data and information acquired from the CLEC E911 data base to support the Company's contention that there is sufficient competition to remove the existing regulatory constraints.¹ On August

¹ See, e.g., Testimony of Robert Mudge at 8-17; Testimony of William E. Taylor at 7-8. Verizon has also referenced the CLEC E911 data base in several discovery request responses, including Verizon's responses to DTE 1-2 and DTE 2-11; AG-VZ-1-1 (Declaration of William E. Taylor, CC Docket 01-100, at 16, n. 39 and at 17, n. 40), AG-VZ-1-6, AG-VZ-1-7, and AG-VZ-2-

10, 2001, AT&T issued three information requests to Verizon, ATT-VZ-1-1, 1-2, and 1-3, seeking information on the E911 data base and Verizon's application of E911 rules to several hypothetical situations. On August 20, 2001, Verizon filed responses noting that certain requested information was the "confidential and proprietary information of the CLECs that may not be disclosed by Verizon MA without the CLEC's authorization." (Response, ATT-VZ-1-1, 1-2). Verizon further noted that it was providing the requested information only to the Department and those parties to whom the CLECs authorize disclosure. (Response, ATT-VZ-1-1, 1-2). On August 27, 2001, Verizon filed a motion for confidential treatment of its responses to ATT-VZ-1-1 and 1-2 ("Verizon Motion"), contending that the requested information was confidential and proprietary, and could be "useful in establishing sales and network strategies."² That same day, AT&T filed its Motion seeking to compel Verizon to provide the requested data and information or, in the alternative, to strike the testimonies of Robert Mudge and William E. Taylor which rely upon CLEC E911 data and information to support Verizon's claims that sufficient competition exists in the Commonwealth to remove price regulation. Thereafter, by Memorandum dated August 28, 2001, the Hearing Officer directed AT&T to supplement its motion with proof of attempts at settling any discovery dispute and also invited parties to respond to the AT&T Motion by September 7, 2001.

Argument

The Department should either require Verizon to provide the data and information it uses to support its claims and contentions, or strike the portions of record evidence, including testimonies and information request responses, that refer to or otherwise rely upon such data and information.³ As AT&T points out:

Verizon now refuses to provide AT&T with the basis for the E911 numbers Verizon propounds, while at the same time Verizon seeks to use these numbers to make assumptions about competition in the Massachusetts market...[and indeed]...Verizon is refusing to provide information it exclusively has by virtue of its position as the incumbent local exchange carrier at the same time that it seeks to use that information to demonstrate that it does not have market power as the incumbent local exchange

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² D.T.E. 01-31, Verizon Massachusetts Motion for Confidential Treatment (August 27, 2001) ("Verizon Motion").

³The Attorney General notes that the State Administrative Procedure Act, G.L. c. 30A, §11; the Department's Procedural Rules, 220 C.M.R. §§1.00 *et seq.*; and Mass.R.Civ.P. 26 entitle parties to meaningful discovery.

carrier.⁴

The Department should not allow Verizon to have it both ways. If Verizon refuses or is otherwise unable to provide the requested data and information, then the Department should not allow Verizon to use or otherwise rely upon the data and information to build or support its case.

The Department has held that third party carrier-specific information is eligible for proprietary treatment and that proprietary information should not be disclosed without the third party's consent. *See* D.T.E. 01-31 Phase I, Hearing Officer Ruling on Verizon Massachusetts' Motions for Confidential Treatment (August 29, 2001) ("August 29, 2001 Ruling") at 4 (regarding public disclosure of carrier-specific data); *see also* 47 U.S.C. § 222(b)(regarding the use by carriers of customer proprietary network information).⁵ The Attorney General respects the rights of CLECs to protect their proprietary interests and recognizes that CLECs play a role in whether or not their carrier-specific information may be shared with other parties.⁶

Verizon, however, has made the CLEC proprietary information an issue by relying upon it to support its contentions regarding competition in the Massachusetts marketplace.⁷ If the parties cannot conduct discovery concerning the basis of Verizon's contentions, then the parties are at a distinct disadvantage and are denied due process.⁸ The Department, therefore, must strike the testimonies and related

⁴AT&T Motion, p.2.

⁵ 47 U.S.C. § 222(b) provides that: "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts."

⁶ Recently, the Attorney General, Verizon, and RCN-BecoCOM LLC completed an agreement so as to allow the Attorney General access to RCN-specific information in this docket.

⁷The view that the consent of a CLEC is required in connection with the use of the CLEC's proprietary information is equally applicable to an incumbent local exchange carrier such as Verizon which seeks to use the information.

⁸ *See BECo*, D.T.E. 97-95 (Interlocutory Order)(July 2,1998)(where the Department stated "[a]ccess to relevant materials is needed by all parties in order to develop a complete record in a proceeding. To the extent that BECo's Proposal prohibits all access to certain documents for certain parties, that Proposal is inconsistent with G.L. c. 30A. Denial of material to parties or their consultants contravenes both G.L. c. 30A and general due process considerations.); *see also* 220 C.M.R. 1.06 ("[t]he purpose for discovery is to facilitate the hearing process by permitting the parties and the

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information request responses that refer to or rely upon CLEC E911 data and information.

Conclusion

For these reasons, the Department should compel Verizon to provide the requested CLEC E911 data and information or, in the alternative, strike those portions of the Mudge and Taylor testimonies and related information request responses that refer to or rely upon CLEC E911 data and information.

Sincerely,

Karlen J. Reed
Wilner Borgella, Jr
Assistant Attorney General
Utilities Division

WB/wb

cc: Paula Foley, Hearing Officer
DTE 01-31 service list

Department to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled.”).